

Columbia, a point remote from Kalispell, where Mr. McIntire claimed to be on duty, and it was impossible for the disbursing officer to inform himself by personal observation as to whether Mr. McIntire was actually employed during the period in question.

A reasonable construction of the orders given to Mr. Hoyt, already stated by the Commissioner of Indian Affairs, is that when a voucher of a commissioner covering his salary and per diem should be certified by him, and such voucher should in addition be approved by the chairman of the commission, the certificate and approval would be sufficient evidence of the fact of actual employment to authorize payment.

The money appropriated was under the control of the Interior Department, and it was within the power of the Department to prescribe rules that should govern the disbursing agent in making disbursements, and when it has directed him upon what evidence he should make the payment, and he in good faith made payment only upon the evidence prescribed by the Department for his guidance, I am not able to see upon what legal principle he should be held personally responsible if such payment should be made to a person not entitled to the money so paid.

I am, therefore, of opinion, and so decide, that Mr. Hoyt was entitled to credit for the payments made by him to Mr. McIntire, and no difference is found in the Auditor's settlement as per certificate herewith.

I wrote to Mr. McIntire February 11, 1903, requesting him to present any reasons that he might have why the overpayment made should not be charged back to him. Mr. McIntire, in his reply March 7, 1903, states as follows:

"The Secretary of the Interior never exercised his pleasure to terminate my membership on said commission, nor was I ever notified of any such action, but at all times after May 24, 1901, until September 30, 1901, I remained a member of said commission, subject to the orders of the Secretary, ready and willing to perform the duties that might have been required of me. With full knowledge of the above facts, the salary incident to the office was paid to me, and not until September 30, 1901, when the Secretary ordered the disbursing officer of the commission to pay no further salaries, was any question raised in the matter. For this reason the salary paid me from May 26, 1901, to September 30, 1901, I consider I am

entitled to, having held myself in readiness to respond to any call of the Secretary."

For the reasons given, *supra*, and which it is not necessary to repeat, I am of opinion that Mr. McIntire was not entitled to pay except when actually employed. He certified on each voucher that he had been actually employed, and upon these misrepresentations of fact he was paid.

The Auditor for the Interior Department should state an account charging Mr. McIntire with the overpayments, and call upon him to refund the amount.

### RENT OF BUILDINGS IN THE DISTRICT OF COLUMBIA.

The appropriation for "Government Exhibits, Louisiana Purchase Exposition, St. Louis, Missouri," not having provided "in terms" for the payment of rent of buildings in the District of Columbia, the payment therefrom of rent of a building in said District is prohibited by the act of March 3, 1877.

(Decision by Comptroller Tracewell, April 11, 1903.)

In the matter of the revision of the account of William M. Geddes, disbursing clerk, United States Government Board, Louisiana Purchase Exposition, for the months of October and November, 1902, in settlement, dated January 7, 1903.

This account was withdrawn for revision on my own motion on March 30, 1903. On that date a memorandum of exceptions was sent to this disbursing officer calling for explanations relative to a number of vouchers. Since that date he has forwarded explanations which are considered to be sufficient to avoid any disallowance on any of the vouchers questioned, except as to vouchers Nos. 36 and 43, which represent amounts paid out of the appropriation "Government Exhibits, Louisiana Purchase Exposition, St. Louis, Missouri."

Voucher No. 36 is for \$40 rent paid John C. Eckloff for rent of rooms in the District of Columbia; No. 43 is for \$20 rent paid to John F. Shea for room in District of Columbia.

The act of March 3, 1877 (19 Stat., 370) provides:

"\* \* \* and hereafter no contract shall be made for the rent of any building or part of any building to be used for the purposes of the Government, in the District of Columbia,

until an appropriation therefor shall have been made in terms by Congress; and that this clause be regarded as notice to all contractors or lessors of any such building or any part of building."

Under this act, which seems to be so plain as not to need interpretation, it is not seen how this appropriation can be used to pay rent in the District of Columbia. This appropriation certainly does not provide in terms for payment of rent in the District.

This case is clearly distinguishable from the one in 6th Comp. Dec., 75, where I was able to hold, by a most liberal construction, that the appropriation made to erect a building for the Department of Justice was available to pay rent for rented quarters after the building occupied by the Department of Justice had been torn down.

There is no such overruling necessity in this case as admits of a holding that the appropriation act in question is repugnant to and in conflict with the act of Congress of March 3, 1877, as there was in that case.

In that case to have held that the acts were not repugnant would have put the Department of Justice, with its records, in the street.

In this case all that can happen by enforcing a law made by Congress will be a matter of inconvenience.

This case is on all fours with the one determined by the Attorney-General in 15 Op. Att. Gen., 274. A quotation from that opinion will make it clear that this appropriation can not be used to pay rent in the District of Columbia.

"While it is true, as stated by Colonel Casey, that all the works under the War Department requiring engineering supervision must be supplied with offices where planning, consultations, and drafting can be carried on, yet when a duty of this character is devolved upon the Secretary of War, and no appropriation is made for the hire of an additional building, it must be considered that Congress has determined that the accommodations now at his disposal are sufficient. While such buildings are a part of the appliances required in the construction of the works, and might properly be charged to the appropriation for those works if they were required where accommodations had not been provided by the Government to the officer to whom their expenditure was intrusted, yet where such accommodations are provided, it can not be held that additional ones may be hired because those provided

are inconvenient or insufficient in the judgment of those who are to conduct the business. It must be held that Congress, in directing that no building should be hired to be used for the purposes of the Government until an appropriation therefor shall have been made in terms, has determined otherwise."

I am therefore constrained to disallow the amounts of these vouchers as a credit to such disbursing officer.

### INCREASE OF PAY OF OFFICERS OF THE REVENUE-CUTTER SERVICE SERVING BEYOND THE LIMITS OF THE STATES, ETC.

The terms of the appropriation in the act of March 2, 1901, for 10 per cent increase on pay of officers of the Army "serving at foreign stations," must be regarded as indicating the meaning of the language used in the proviso thereto "serving beyond the limits of the States comprising the Union," etc., and as defining the intention of Congress to authorize such increase of pay only where officers have served at foreign stations.

Service by an officer of the Revenue-Cutter Service on a revenue steamer while cruising in the waters of southeastern Alaska is not service at a foreign station within the meaning of the acts of March 2, 1901, and June 30, 1902, which provide for 10 per cent increase of pay to officers of the Army "serving at foreign stations."

*(Decision by Comptroller Tracewell, April 13, 1903.)*

The Auditor for the Treasury Department, by settlement dated March 23, 1903, of the claim of W. A. Wiley, second lieutenant, of the Revenue-Cutter Service, for 10 per cent increase of pay for service beyond the States comprising the Union and the Territories of the United States contiguous thereto, disallowed the amount claimed. The claimant by application filed April 3, 1903, requests a revision of his account.

On April 14, 1902, Lieutenant Wiley was ordered to report for duty on the revenue steamer *Perry*, which vessel, on June 14, 1902, was ordered to visit and examine the canneries and salteries of the salmon fisheries in southeastern Alaska, and returned to Port Townsend October 2, 1902. He was not assigned to shore duty during the cruise of the vessel.